

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARC L. THORNTON,)
vs.)
Plaintiff,)
vs.) Case No. 12-cv-0700-MJR-SCW
RANDY DAVIS,)
Defendant.)

MEMORANDUM AND ORDER

REAGAN, District Judge:

This civil rights action was commenced by inmate Marc Thornton under 42 U.S.C. 1983. Thornton filed an amended complaint on November 19, 2012. Some (but not all) of the claims contained therein survived threshold review on November 20, 2012. Other Orders followed. At this time, remaining are Thornton's claims against one Defendant -- Randy Davis. On April 5, 2013, Defendant Davis filed an answer, affirmative defenses, and a motion to dismiss portions of the amended complaint. After obtaining additional time, Plaintiff responded on June 13, 2013. Now before the Court is a Report and Recommendation (R&R) submitted by the Honorable Stephen C. Williams, Magistrate Judge, on September 30, 2013 (Doc. 52).

The R&R recommends that the undersigned deny in part and find moot in part Defendant Davis' dismissal motion (Doc. 42), which had been filed with a supporting memorandum (Doc. 43). Specifically, Judge Williams recommends:

that the Court **DENY IN PART AND FIND AS MOOT IN PART** Defendant Davis' motion to dismiss (Docs. 42 & 43). It is **RECOMMENDED** that the Court **FIND AS MOOT** Defendant's motion to dismiss Plaintiff's claim for equitable relief as such claims for relief were dismissed in the Court's previously threshold Order.

Further, it is **RECOMMENDED** that Defendant Davis' motion to dismiss Plaintiff's Fourteenth Amendment due process claim be **DENIED** to the extent Defendant argues that the claim is redundant. However, the undersigned

RECOMMENDS that Plaintiff's due process claim be **DISMISSED** without **prejudice** under the Court's § 1915A reviewing power, as the count fails to state a claim for which relief can be granted.

Should the Court adopt the undersigned's findings and recommendations, all that will be left in this case is Plaintiff's claim of unconstitutional conditions of confinement against Defendant Davis.

The R&R notified the parties that they must file any objections "on or before October 18, 2013" (Doc. 52, p. 9). That deadline elapsed seven days ago, and no objections were filed by any party. Nor did any party seek an extension of the objection-filing deadline. Accordingly, pursuant to U.S.C. 636(b), the undersigned Judge need not conduct *de novo* review of the Report and Recommendations. **28 U.S.C. 636(b)(1)(C)** ("A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). *See also Thomas v. Arn*, 474 U.S. 140 (1985); *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 741 (7th Cir. 1999); *Video Views Inc., v. Studio 21, Ltd.*, 797 F.2d 538 (7th Cir. 1986).

The Court hereby **ADOPTS** the R&R (Doc. 52) in its entirety. The Court **FINDS MOOT IN PART and DENIES IN PART** Defendant Davis' motion to dismiss (Doc. 42).

The Court finds the motion moot to the extent it seeks dismissal of Plaintiff's claim for equitable relief. That claim already was dismissed by the Court in a prior Order (*see* Doc. 23). The Court denies the motion to the extent Defendant asserts that Plaintiff's Fourteenth Amendment due process claim is redundant. The due process claim is not redundant to Plaintiff's Eighth Amendment conditions of confinement claim. However, pursuant to the Court's § 1915A reviewing power, the undersigned Judge **DISMISSES** the due process claim without prejudice for failure to state a claim upon which relief can be granted, because (as Judge Williams noted, Doc. 52, p. 8): "Plaintiff cannot maintain a due process claim on the facts presented in his Amended Complaint."

Following entry of this Order, what is left herein is Plaintiff's Eighth Amendment claim of unconstitutional conditions of confinement against Defendant Davis.

IT IS SO ORDERED.

DATED October 25, 2013.

s/Michael J. Reagan
Michael J. Reagan
United States District Judge